Case Summary

A Case involving Two Concurrently Valid Endorsements: Complaint against Immigration Department Unfounded

The Complaint

The complainant lodged a complaint against the Immigration Department ("Imm D"), accusing Officer A for wrongfully granting her a limit of stay in Hong Kong according to an "old" Multiple Entry Endorsement ("Endorsement"), resulting in her subsequent arrest for over-staying.

The Event

2. The complainant was a frequent traveller to Hong Kong. She obtained from the travel document issuing authority ("Authority") of her place of origin an Endorsement that allowed her entry into Hong Kong on or before 7 April 2005, and thereafter multiple entries within 90 days from her first landing. She entered Hong Kong on 20 January 2005. Her Endorsement thus allowed her multiple entries into Hong Kong until 20 April. She made several trips on this basis and finally left Hong Kong on 14 March 2005.

3. In a parallel development, before the above Endorsement expired, the complainant applied for and was issued a second Endorsement by the Authority on 25 March 2005. This Endorsement allowed her entry into Hong Kong on or before 25 June and multiple entries within 90 days thereafter.

4. The complainant entered Hong Kong again on 28 March 2005. Officer A examined her travel document, saw the old Endorsement and accordingly granted her a limit of stay until 20 April.

5. On 17 May 2005, a police officer stopped the complainant in the street to check her identity document and arrested her for overstaying. Imm D officers later discovered the second Endorsement on her travel document that would have allowed her to stay until 25 June. The complainant was released immediately.

Two Endorsements

6. Imm D informed The Ombudsman that this was the first such incident ever. Under normal circumstances, the Authority would not issue to anyone two Endorsements with concurrent validity. This Office could not say how the complainant came to possess two concurrently valid Endorsements, as The Ombudsman has no authority to investigate matters outside Hong Kong.

Comments from Imm D

7. Imm D would determine the limit of stay for travellers based on the Endorsement on their travel documents. An “Important Notice to Visitors” (“Notice”) would also be provided to alert visitors of the limit as well as other conditions of stay, so that they would not breach immigration laws.

8. For this complaint, when the complainant sought entry into Hong Kong, Officer A checked her travel document and found a valid Endorsement (i.e. the “old” Endorsement), on which strength, allowed the complainant to stay until 20 April 2005. He also followed normal procedure and gave her a copy of the Notice for reference. The complainant had, therefore, been alerted to the limit and other conditions of her stay.

9. Obviously, Officer A was not aware that there was a second Endorsement. Similarly, the complainant was unaware of her limit of stay and did not tell Officer A of her new Endorsement. The culmination of these events led to her subsequent detention by the Police.

10. Imm D considered that Officer A had handled the complainant’s entry into Hong Kong according to the general requirements of the Department’s arrival procedures.

Our Observations and Opinions

11. Officer A had not spotted the new Endorsement and had thereafter relied on the “old” Endorsement to impose on the complainant a limit of stay until 20 April 2005. As Imm D had confirmed that no one was supposed to hold two valid Endorsements at the same time, we consider it reasonable for Officer A to stop looking for further Endorsements once he had come across the valid “old” Endorsement on the complainant’s travel document.

12. This incident obviously resulted from the complainant holding two valid Endorsements at the same time. Although we could not and did not investigate how she happened to have two concurrent Endorsements, we consider that Imm D and Officer A could not be blamed for the blunder in this case.

13 We also consider the complainant should bear partial responsibility for the incident because:

(a) the incident directly resulted from her holding two concurrently valid Endorsements, and she did not alert Officer A to her new Endorsement;

(b) as a frequent visitor to Hong Kong, she should be familiar with the regulations on limit of stays; and

(c) Officer A had given her the Notice to remind her of the limit of stay. She should have checked that date, but obviously had again failed to do so.

Conclusion

14. In view of the above, The Ombudsman considered this complaint **unsubstantiated.**

15. It was unfortunate that the complainant had been detained by the Police. However, given the circumstances of the case, The Ombudsman considers that Imm D and its staff had performed their duties appropriately and was not responsible for the incident.

Office of The Ombudsman
January 2006